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Big tobacco market share falls State may see payments drop

*By Nancy Zuckerbrod
 Associated Press*

WASHINGTON -- States and tobacco companies appear headed toward a legal showdown over more than \$1 billion the states say is owed under a 1998 agreement.

State attorneys general released the findings Tuesday of a study by an independent economic firm that found the major cigarette companies have lost market share to smaller companies that were not part of the settlement with 46 states.

The analysis by the Brattle Group found that the settlement, which set marketing restrictions on the companies and required payments to states, was a "significant factor" contributing to the loss of market share for the large companies.

That finding is one of several determinations that would be necessary for the tobacco companies to

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reduce their annual payments to states under the pact.

This year's payment of \$6.5 billion is due April 17. The tobacco companies contend they should be able to reduce that by about \$1.2 billion.

"We urge the companies to make their full payment on April 17," Idaho's attorney general, Lawrence Wasden said, in a telephone interview. "We believe that the states have good evidence to show that they have diligently enforced."

Wasden said the companies would be entitled to a reduction only if states did not adequately enforce laws requiring cigarette makers outside the settlement to put money in escrow for future legal obligations.

The states have threatened to take legal action if the companies try to reduce their payments.

Kentucky Attorney General Greg Stumbo said he would "vigorously oppose" any attempt by tobacco manufacturers to lower their payments.

"What you're seeing is a laying of the groundwork by some of the participating manufacturers to ask for some relief from their payments," Stumbo said.

Kentucky is due \$115 million from the payments in April, Stumbo's spokesman said.

The big cigarette manufacturers say the issue should go to arbitration and that they should pay less until that process is over.

"We think it's clear that not all states were diligently enforcing the statutes," said Charles Blixt, general counsel for R.J. Reynolds Tobacco Co. He said that's why companies not part of the settlement grew as they did.

There is a lag in annual payments to the states. The money owed this year actually deals with the companies' loss of market share in 2003. That year, the companies saw their share of the market drop to about 92 percent, down from 99 percent before the settlement.

Blixt said R.J. Reynolds would decide by the middle of next month whether it will make its next payment in full.

Wasden said there are two possible outcomes.

"One of them is litigation," he said. "The other possibility is a negotiated answer."

The two sides are in talks.

So far the tobacco companies have paid more than \$41 billion to the states under the settlement agreement.

The manufactures who initially signed that deal and contribute virtually all the money are R.J. Reynolds, Philip Morris Cos. Inc. and Lorillard Tobacco Co.

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